

Officer History

Officer Name: Nunez, Daniel

Tax ID: [REDACTED]

Sex: M

Shield: 18750

Race: [REDACTED]

Rank: POM

Command: 267

DOB: [REDACTED]

Appt Date: 01/09/2006

Age: [REDACTED]

Tenure: 14

CCRB #	Report Date	Incident Date	Allegation	Disposition	NYPD Disposition	NYPD Penalty	Command
200610674	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	08/11/2006	08/11/2006	OMN - Failure to produce stop and frisk report	Other Misconduct			044
	08/11/2006	08/11/2006	Abuse - Search (of person)	Substantiated (Charges)	Plead Guilty - DCT	Vacation days: 2	044
	08/11/2006	08/11/2006	Abuse - Question and/or stop	Substantiated (Charges)	Plead Guilty - DCT	Vacation days: 2	044
201115417	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	12/01/2011	11/30/2011	Abuse - Premises entered and/or searched	Unsubstantiated			047
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
201213751	10/20/2012	10/20/2012	OMN - Failure to produce stop and frisk report	Other Misconduct	Command Discipline - A	Command Discipline - A	047
	10/20/2012	10/20/2012	Abuse - Stop	Substantiated (Command Discipline)	Command Discipline - A	Command Discipline - A	047
	10/20/2012	10/20/2012	Abuse - Frisk	Substantiated (Command Discipline)	Command Discipline - A	Command Discipline - A	047
	10/20/2012	10/20/2012	OMN - Failure to prepare a memo book entry	Other Misconduct	Command Discipline - B	Command Discipline - A	047
	10/20/2012	10/20/2012	Abuse - Search (of person)	Unsubstantiated			047
201305568	06/22/2013	05/29/2013	Abuse - Refusal to obtain medical treatment	Unsubstantiated			047
201408513	08/18/2014	08/16/2014	Abuse - Premises entered and/or searched	Substantiated (Formalized Training)	Formalized Training	Formalized Training	047
	08/18/2014	08/16/2014	OMN - Failure to produce stop and frisk report	Other Misconduct	Instructions	Formalized Training	047
	08/18/2014	08/16/2014	Abuse - Stop	Unsubstantiated			047
	08/18/2014	08/16/2014	Discourtesy - Word	Unsubstantiated			047
	08/18/2014	08/16/2014	Abuse - Frisk	Unsubstantiated			047
	08/18/2014	08/16/2014	Abuse - Threat of arrest	Unsubstantiated			047

Confidential Communication. To be used for authorized purposes only

Officer History

Officer Name: Nunez, Daniel

Tax ID: [REDACTED]

Sex: M

Shield: 18750

Race: [REDACTED]

Rank: POM

Command: 267

DOB: [REDACTED]

Appt Date: 01/09/2006

Age: [REDACTED]

Tenure: 14

CCRB #	Report Date	Incident Date	Allegation	Disposition	NYPD Disposition	NYPD Penalty	Command
201409739	09/22/2014	09/19/2014	OMN - Other Misconduct	Other Misconduct			047
201703417	05/03/2017	05/03/2017	Abuse - Threat of arrest	Unsubstantiated			425
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	05/03/2017	05/03/2017	OMN - Failure to produce stop and frisk report	Other Misconduct			425
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	05/03/2017	05/03/2017	Abuse - Threat of arrest	Unsubstantiated			425
	05/03/2017	05/03/2017	Abuse - Threat of arrest	Unsubstantiated			425
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
201704156	05/26/2017	05/24/2017	Abuse - Question	Unsubstantiated			425
	05/26/2017	05/24/2017	OMN - Failure to prepare a memo book entry	Other Misconduct			425
	05/26/2017	05/24/2017	Abuse - Interference with recording	Unsubstantiated			425
	05/26/2017	05/24/2017	Abuse - Search (of person)	Unsubstantiated			425
	05/26/2017	05/24/2017	Force - Physical force	Unsubstantiated			425
	05/26/2017	05/24/2017	Abuse - Frisk	Unsubstantiated			425
	05/26/2017	05/24/2017	Abuse - Vehicle stop	Unsubstantiated			425
Total Charges = 38				Total Cases = 8			

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: [REDACTED]	Team: Team # 5	CCRB Case #: 200610674	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Fri, 08/11/2006 8:30 PM	Location of Incident: [REDACTED]	Precinct: 44	S.O.L. Expires: 02/11/2008
Date/Time CV Reported Fri, 08/11/2006 9:50 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 08/11/2006 9:50 PM

Complainant/Victim	Type	Home Address
1. [REDACTED]	Comp/Victim	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. POM Daniel Nunez	18750	[REDACTED]	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
A . POM Daniel Nunez	Abuse of Authority: Police Officer Daniel Nunez stopped and questioned [REDACTED]	A . Substantiated
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
E . POM Daniel Nunez	Abuse of Authority: Police Officer Daniel Nunez searched [REDACTED]	E . Substantiated
F . POM Daniel Nunez	Other: Police Officer Daniel Nunez failed to prepare a stop and frisk report as required.	F . Other Misconduct
[REDACTED]	[REDACTED]	[REDACTED]

Synopsis

Mr. [REDACTED] complaint concerned the following events: on August 11, 2006, at about 8:30 PM, Officer Daniel Nunez and Officer [REDACTED] stopped Mr. [REDACTED] as he was about to enter his residence at [REDACTED] in the Bronx. The officers asked Mr. [REDACTED] for his identification and he provided it (allegations A [REDACTED]). As Officer Nunez was looking at Mr. [REDACTED] identification, Officer [REDACTED] searched Mr. [REDACTED] short pockets and took out his wallet [REDACTED]. As Officer [REDACTED] was taking Mr. [REDACTED] wallet from his pocket, he “pushed” her hand from one of his pockets. Officer Nunez then “pushed” Mr. [REDACTED] against the wall of his residence [REDACTED] and Officer [REDACTED] searched through Mr. [REDACTED] pockets, took out his wallet, and looked at the contents. While Mr. [REDACTED] was against the wall, Officer Nunez asked him why he appeared excited and searched his pockets (allegation E). Officer [REDACTED] returned Mr. [REDACTED] wallet to him, told him he fit the description of a burglar, and the officers left the scene. Neither Officer [REDACTED] nor Officer Nunez completed a stop and frisk report in regards to their interaction with Mr. [REDACTED] (allegations F [REDACTED]).

Based on the reasonable and plausible testimony of Mr. [REDACTED] concerning the context of the stop and search, the reasonability of two of the officers’ denial of being in the vicinity of the incident, and the lack of any justification for the stop and search as is indicated by NYPD Patrol Guide procedure 212-11 New York State Penal Law 140.50, and Barry Kamins’s *New York State Search and Seizure*, it is recommended that allegations A, [REDACTED] and E be closed, “Substantiated.” [REDACTED]

[REDACTED] Based on NYPD Patrol Guide procedure, it is recommended that “Other Misconduct” be noted for allegations F [REDACTED]

Summary of Complaint

Mr. [REDACTED] filed a complaint with the CCRB on August 11, 2006 by way of the agency’s call processing system (encl. 10a-b). Mr. [REDACTED] made a statement concerning the incident in a telephone conversation with Inv. [REDACTED] on August 15, 2006 (encl. 11a) and was interviewed at the CCRB on August 31, 2006 (encl. 12a-f). Mr. [REDACTED] three statements concerning the incident were very consistent with one another and have been condensed in the narrative below. Variations in the statements are noted below.

On August 11, 2006, at about 8:30 PM, Mr. [REDACTED] was walking back to his apartment alone after having walked around [REDACTED] “about three times” without speaking with anyone as an after dinner routine that he enjoys. He was wearing a [REDACTED] t-shirt with khaki shorts and no hat. Mr. [REDACTED] had only his wallet and keys in his pockets. He saw a marked patrol car containing three officers drive by, turn around in the street, and pull over on the side of the street near him. Mr. [REDACTED] described the driver as a [REDACTED]. He described the officer sitting in the front passenger seat as [REDACTED]. Mr. [REDACTED] described the officer sitting in the back passenger seat as [REDACTED]. These officers were identified during this investigation as Officer [REDACTED], Officer Daniel Nunez, and Officer [REDACTED] respectively. Officer [REDACTED] was driving. From within the patrol car Officer Nunez motioned with one of his fingers for Mr. [REDACTED] to come towards him and Mr. [REDACTED] did so. Officer Nunez and Officer [REDACTED] exited the patrol car and asked Mr. [REDACTED] if he lived in the area and to show identification. Mr. [REDACTED] responded that he lived in [REDACTED] and provided a New York State driver’s license. While Officer Nunez looked at Mr. [REDACTED] license, Officer [REDACTED] “put her hands in” both of Mr. [REDACTED] back short pockets and the front two pockets. Mr. [REDACTED] “thought maybe I did something wrong,” but did not know why he was being stopped. Neither of the officers asked Mr. [REDACTED] if they could frisk, search, or touch him in any way before doing so, nor did either of the officers pat down or touch Mr. [REDACTED] before entering his pant short pockets. As Officer [REDACTED] reached for Mr. [REDACTED] wallet in his back left pocket, he “used my left hand to, you know, push her hand out of my pocket.” Officer [REDACTED] removed the wallet before Mr. [REDACTED] pushed her hand from his pocket and Officer Nunez immediately “pushed me [Mr. [REDACTED] with his left arm, he had my ID with his right hand, and he pushed me towards the wall [of his building] with his left hand.” Mr. [REDACTED] repeatedly asked Officer Nunez, “What’s going on?” Officer Nunez responded by repeatedly stating, “Shut up. Behave.” Officer Nunez kept his left hand open and pressed against Mr. [REDACTED] chest while Officer [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Officer Daniel Nunez of the 44th Precinct was interviewed at the CCRB on January 18, 2007 (encl. 20a-c). Officer Nunez is a [REDACTED]

[REDACTED] On August 11, 2006, Officer Nunez was assigned to training vehicle #1265 with Officer [REDACTED] and worked from 5:00 PM to 2:05 AM and did not have any memo books entries regarding the incident (encl. 19a-c).

When shown a picture of Mr. [REDACTED] Officer Nunez stated that he did not recall ever having interacted with him. Officer Nunez stated that he did not note conducting any stop and questions or responding to any burglaries on August 11, 2006, but stated he would have noted it if he had done so, as he notes every job to which he responds. The first job Officer Nunez noted in his memo book was an arrest he made at 9:15 PM and he described the night as “very busy.” When shown a map of the area (encl. 20c), Officer Nunez stated he made his arrest at 9:15 PM in the vicinity of [REDACTED] and he was not sure if he passed by [REDACTED] at any point during the night. The arrest he made was noted at the corner of [REDACTED] [REDACTED] which forms one of the corners of [REDACTED] and is two blocks from [REDACTED] Officer Nunez stated that at no point would there have been three officers in the patrol car.

[REDACTED]

Communications Documents

[REDACTED]

Police Documents

[REDACTED]

Civilian CCRB Complaint History

[REDACTED]

Civilian Criminal Conviction History

[REDACTED]

Notice of Claim

[REDACTED]

Officer CCRB History

[REDACTED]

Conclusions and Recommendations

Officer Identification

[illegible]

Disputed and Undisputed Facts

[REDACTED]

Credibility

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Assessment of Evidence

[REDACTED]

Allegation A: Officer Daniel Nunez stopped and questioned [REDACTED]

In *People v. Debour* the Supreme Court articulated four levels of police intrusions and the corresponding level of knowledge required to justify each level (encl.4a-h). The first level is a request for information from an individual and requires “some objective credible reason for that interference.” The second level is the common-law right to inquire in which an officer can “obtain explanatory information by means short of forcible seizure” on the basis of “a founded suspicion that criminal activity is afoot.” The third level of suspicion is a forcible stop and detainment in which an officer has reason to believe that the individual has committed, is committing, or is about to commit a felony or misdemeanor. Lastly, if an officer has a “reasonable suspicion” that s/he is in physical danger s/he can frisk the individual in the region in which it is suspected the individual has a weapon. The interaction between Officer [REDACTED] and Officer Nunez with Mr. [REDACTED] fits the description of a stop and frisk, as Mr. [REDACTED] was forcibly stopped and detained and then searched by Officer [REDACTED] and Officer Nunez, and it is this corresponding level of justification that will be used to decide whether or not the stop and frisk was legal.

New York State Penal Law 140.50 (encl. 3a) states that an officer “may stop a person in a public place located within the geographical area of such officer’s employment when he reasonably suspects that such person is committing, has committed or is about to commit either a) felony or b) a misdemeanor defined in the penal law.” Furthermore, in *New York State Search and Seizure*, Barry Kamins states “an officer must indicate specific and articulable facts which reasonably prompted the stop; hunches and ‘gut feelings’ will not be sufficient...the intrusion cannot be arbitrary, based on whim, curiosity, caprice, or a desire to harass.” Mr. [REDACTED] testified that the officers informed him that he fit the description of a burglar. However, the only SPRINT report concerning a burglary in the 44th Precinct on August 11, 2006 concerned a burglary committed in the two and a half hours prior to the incident and did not provide a description of

any individuals. While none of the officers raised this issue, there is the unlikely possibility that there was a burglary pattern in the area that provided a description that was not put over the radio. However, Mr. [REDACTED] testified that he was approaching the door to his residence and that he had not interacted with any persons whatsoever as he was walking around [REDACTED]. When he provided his New York State license to Officer Nunez, it indicates that Mr. [REDACTED] lives in [REDACTED] and the officers would have had no reason to suspect him of any crime and hence to question him and proceed to further detain and then search him. If the officers had witnessed Mr. [REDACTED] committing a crime, they would have had grounds to arrest or issue him a summons, which they did not, and they did not suggest to him that they suspected him of being in the act of committing a crime. Furthermore, the officers did not articulate any basis for suspecting that Mr. [REDACTED] would imminently commit a crime and there is no basis for suggesting that Mr. [REDACTED] was going to do so, as he was about to enter his residence. Therefore, there was insufficient basis for Officer [REDACTED] and Officer Nunez to forcibly stop and detain Mr. [REDACTED].

Having demonstrated that the stop of Mr. [REDACTED] was not legal, it is necessary to analyze whether or not it was conducted in bad faith. The OATH case of *PD v. Dowd & Rose* (encl. 3b) concludes, “[a]n improper search or seizure is punishable misconduct if the officer acted with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper.” The NYPD Street Encounters: Legal Issues guide (encl. 2a), which is distributed to officers to be put into their memo books as portable guides, mirrors New York State Penal Law 140.50, stating that in order to stop and frisk an individual an officer needs to have “a reasonable suspicion that a person is committing, has committed, or is about to commit a felony or misdemeanor.” Thus the basic guidelines of the law should have been readily available to Officer [REDACTED] and Officer Nunez, and the situation by no means required a subtle analysis of the circumstances and research of esoteric court cases in order to determine that the stop and frisk was illegal. Additionally, the fact that Officer [REDACTED] provided Mr. [REDACTED] with a false pretense for stopping and searching him indicates that the officers knew that their actions required further justification than the actual circumstances provided. In sum, Officer [REDACTED] and Officer Nunez acted without any care that their actions accorded with the law and thus acted in bad faith.

On the basis of Barry Kamins’ *New York State Search and Seizure* (encl. 4a-h), New York State Penal Law 140.50, OATH case *PD v Dowd and Rose*, and the NYPD Street Encounters: Legal Issues guide, it is recommended that allegations A and B be closed, “Substantiated.”

Allegation E: Officer Daniel Nunez searched [REDACTED]

Barry Kamins’ *New York State Search and Seizure* states that a frisk is “a limited touching of the suspect for the purpose of feeling any dangerous weapons” in which concealed articles of clothing, such as pockets, are not entered. A search is distinguished from a frisk and the difference has “constitutional significance.” Entries into concealed parts of clothing are considered searches. In *New York State Search and Seizure*, Barry Kamins articulates, “A police officer cannot search an individual’s pocket, reach into a person’s pocket to remove a closed container, or place a hand inside a suspect’s waistband; these actions constitute full-blown searches that require probable cause.” As both Officer [REDACTED] and Officer Nunez put their hands in Mr. [REDACTED] pockets, these allegations are being pled as searches of Mr. [REDACTED].

New York State Penal Law 140.50 specifies that officers may conduct a search of a person encountered in the street or in a car if an officer “reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article, or substance readily capable of causing serious physical injury...” According to the NYPD Street Encounters: Legal Issues guide, if an officer has such suspicion, the officer “may frisk the subject for a deadly weapon, or any instrument or article readily capable of causing serious physical injury.” Furthermore, the officers must limit the frisk to the “specific area that causes him to fear for his safety.” If the frisk does not confirm the presence of an object that could be used to harm the officer, then a search into that area is unjustified. NYPD Patrol Guide Procedure 212-11 (encl. 1a-c) mirrors this requirement, stating, “Frisk, if you reasonably suspect you or others are in danger of physical injury. Search, if frisk reveals object which may be a weapon.” In this case, the officers did not articulate any reasonable suspicion that Mr. [REDACTED] had any sort of “deadly weapon, or any instrument, article, or substance” with which he would cause the officers “physical injury” and Mr. [REDACTED] testified that he had only his wallet and keys on his person, which would be easily distinguishable from a weapon if a proper frisk had been conducted. Moreover, neither Officer [REDACTED]

nor Officer Nunez frisked Mr. [REDACTED] before searching his pockets, thus exhibiting that even if they had had the justification for a stop and frisk, it was nonetheless conducted improperly and illegally. In terms of allegation E in specific, the fact that Mr. [REDACTED] had “pushed” Officer [REDACTED] hand away from his pocket, together with the fact that Officer [REDACTED] successfully obtained Mr. [REDACTED] wallet from his back left pocket, did not in any way satisfactorily raise the level of justification to search Mr. [REDACTED] front pockets. Thus, the searches conducted by both Officer [REDACTED] and Officer Nunez were illegal according to New York State Penal Law 140.05 and NYPD Patrol Guide Procedure 212-211.

As noted in the analysis of allegations A [REDACTED] the determination of whether or not Officer [REDACTED] and Officer Nunez searched Mr. [REDACTED] in bad faith is assessed according to the standard detailed in OATH case *PD v. Dowd & Rose*, which is quoted above. According to NYPD Patrol Guide procedure 212-11, even if Officer [REDACTED] and Officer Nunez had reasonable suspicion that they were in danger, they should have first conducted a frisk of Mr. [REDACTED] and, depending on the results of the frisk, entered his pockets. Thus, they exhibited a carelessness for both the law and the proper way of executing the law, which constitutes bad faith.

On the basis of New York State Penal Law code 140.50, NYPD Patrol Guide procedure 212-11, and the NYPD Street Encounters: Legal Issues guide, it is recommended that allegations [REDACTED] E be closed, “Substantiated.”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation F: Police Officer Daniel Nunez failed to prepare a stop and frisk report as required.

[REDACTED]

Neither Officer [REDACTED] nor Officer Nunez completed a stop and frisk report in regards to stopping and frisking Mr. [REDACTED] NYPD Patrol Guide procedure 212-11 (encl. 1a-c) states that “for EACH person stopped” a stop and frisk report must be filled out. Thus Officer [REDACTED] and Officer Nunez should have completed a stop and frisk report regarding their interaction with Mr. [REDACTED] Neither Officer [REDACTED] nor Officer Nunez did so and thus it is recommended that “Other Misconduct” be noted for allegations F [REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: